**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 14401 of 2006**
**With**
**SPECIAL CIVIL APPLICATION No. 14402 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ?**-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

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**SHANKARBHAI DHANJIBHAI PATEL & 1 - Petitioner(s)**
**Versus**
**STATE OF GUJARAT THRO' THE SPECIAL SECRETARY & 4 - Respondent(s)**

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**Appearance :**
MR KIRTIDEV R DAVE for Petitioner(s) : 1 - 2.MR RAHUL K DAVE for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2 - 4.
MR SUDHIR SHAH for Respondent(s) : 5,
MR SATYAM Y CHHAYA for Respondent(s) : 5,

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**CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**

**Date : 06/09/2006**

**ORAL JUDGMENT**

1. Rule. Mr.Mengdey, learned Assistant Government Pleader appears for respondents nos.1 to 4 waives notice of Rule and Mr.Chhaya, learned advocate for respondent no.5 waives notice of Rule.

2. With the consent of the learned advocate appearing for both the sides, the matter is finally heard today.

3. Upon hearing the learned advocate for both the sides, it appears that there is no dispute on the aspect that on 5/1/1990, the entry no.857 was entered into revenue record. However, as per the private respondents, such entry came to be recorded in revenue record without considering overall division of the property and is resulting into adversely affecting rights of the private respondents in the property which is subject matter of the said entry namely various lands situated at Village Ambavpura, Taluka-Kadi, District-Mehsana. There is also no dispute on the point that the entry came to be challenged before the higher forum

and the Prant Officer as per the order dated 31/3/2005 cancelled the entry and remanded the matter to the Mamlatdar. The matter was further carried before the District Collector and the revision was dismissed. The matter was further carried before the State Government in revisional jurisdiction and as per the order dated 5/7/2006, the revision is dismissed and against the said order passed by the State Government, the petitioners have approached to this Court by preferring the present petitions.

4. I have heard learned advocate appearing for the petitioners, Mr.K.R.Dave, learned Assistant Government Pleader Mr.Mengdey for the State and Mr.Chhaya, learned advocate for the private respondents.

5. As the entry was entered in the revenue record as back in the year 1990 and the grievance is raised for the first time in the year 2004, delay can be said as operating for interference to the impugned orders. However, it appears that as declared by

Mr.Chhaya during the course of hearing that pending the petition, the private respondent has preferred Civil Suit No.268 of 2006 in the Court of Civil Judge (JD), now Civil Judge, Kadi for asserting the right in the property situated at Ambavpura, Taluka-Kadi, District-Mehsana and the said Civil Suit is pending. Therefore, under these circumstances, if the entry no. 857 dated 5/1/1990 is allowed to continue in the revenue record with the clarification that the same will be subject to the outcome of Civil Suit No.268 of 2006 pending in the Court of Civil Judge, Kadi, the same would be in the interest of the petitioners as well as private respondent and the reason being that the Civil Suit is preferred for partition and share in the property and in any event so far as the rights in the properties are concerned, the revenue authority would not be able to finalize the issue and such aspects are to be finalized by the concerned Civil Court. Further if the factum regarding pendency regarding Civil Suit is mentioned in the revenue record, any party to the proceeding as well as the public at large would be

put to the notice before dealing with the property in question. The learned counsel appearing for both the sides namely petitioners and the private respondents have not invited the reasons further since the Civil Court is yet to finalize the issue in the concerned Civil Suit.

6. In view of the above, the orders passed by the Prant Officer, its confirmation thereof by the District Collector and further confirmation by the State Government are quashed and set aside with the direction that entry no.857 dated 5/1/1990 shall continue to remain in the revenue record with the observations and clarification that respondent no.5 namely Anandiben Atmaram Patel has preferred Civil Suit No.268 of 2006 for partition of the property and other reliefs in the Court of Civil Judge, Kadi and the entry shall be subject to final outcome of the proceedings of the said Civil Suit and the rights of the parties shall finally governed as may be decided by the Civil Court in the said suit. It is further clarified that the concerned Civil Court shall be at the liberty to take independent view to

the matter on the basis of the material as may be available on record in the proceedings of the suit and shall not be influenced by any of the observations made by the revenue authority or by this Court in the present order.

7. Petitions are allowed to the aforesaid extent considering the facts of the case, there shall be no order as to costs. Rule is made absolute accordingly.

(Jayant Patel, J.)

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